IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) - 1139/MB/2020

Under Section 7 of the I&B Code, 2016

In the matter of

Mrs. Sandhya Dinesh Sancheti

Dinesh Bungalow, Adarsh Nagar, Market Yard, Pune- 411037

.... Petitioner No. 1

Mr. Amesh Ajitkumar Daga

Ajyot Bungalow No. 17, Sujoy Garden, Mukund Nagar, Pune- 411037

…. Petitioner No. 2

Mr. Nemichand Balaram Khinvasara

Gulmohar Bungalow, Aniket Society, Swami Vivekanand Marg, Bibvewadi, Pune- 411037

…. Petitioner No. 3

Mr. Shashikant Zumbarlal Katariya

Flat No. 101, A Wing, Mudra CTS No. 1760, Satara Road, Pune- 411037

…. Petitioner No. 4

Vs.

Trimurti Foodtech Private Limited

Plot No. A-5, MIDC Area Railway

Station, Aurangabad, Maharashtra-431005

…. Corporate Debtor

Order Pronounced on: 11.08.2021

Coram:
Hon'ble Suchitra Kanuparthi, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv. Arshil Shah

For the Corporate Debtor: Adv. Harsh Kesharia

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. Mrs. Sandhya Dinesh Sancheti (hereinafter called as 'Petitioner No. 1'), Mr. Amesh Ajitkumar Daga (hereinafter called as 'Petitioner No. 2'), Mr. Nemichand Balaram Khinvasara (hereinafter called as 'Petitioner No. 3') and Mr. Shashikant Zumbarlal Katariya (hereinafter called as 'Petitioner No. 4') have sought the Corporate Insolvency Resolution Process against Trimurti Foodtech Private Limited (hereinafter called as 'Corporate Debtor') on the ground that the Corporate Debtor committed default to the extent of Rs. 20,98,78,265/- as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called as the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Contentions of the Petitioner:

2. The Counsel for the Petitioners submits that the Corporate Debtor had been in the business of food products and its export thereof. During July, 2018, husband of the Petitioner No. 1 and father of the Petitioner No. 2 happened to meet with Mr. Atul Banginwar who is one of the Director of the Corporate Debtor

Company. In this meeting, Mr. Atul Banginwar offered to carry out some business with the Petitioners as the Corporate Debtor Company was financially in bad shape to streamline their business. At this meeting, a proposal was offered to the Petitioners that if some financial support is extended from Petitioner No.s 1 to 4 then a business synergy can be built for the mutual benefits of both the Corporate Debtor and the Petitioners.

3. After a series of discussions, the Petitioner No.s 1 & 2 got convinced to put a fund of approximately Rs. 50,00,000/- to restart the plant and get the factory running. Accordingly, the Petitioner No.s 1 & 2 agreed to contribute sum of Rs. 25,00,000/- each to the Corporate Debtor to restart the factory.

4. The Counsel for the Petitioners further submits that during August 2018, the Corporate Debtor was struggling to settle the dues of State Bank of India which stood at an amount of Rs. 16,89,29,237/-. The State Bank of India then offered to the Corporate Debtor to settle its dues for an amount of Rs. 11,77,13,152/- as One Time Settlement to be paid within four months of the sanction. Thereafter, the Directors of the Corporate Debtor approached the Petitioners again to capitalize on the opportunity of One Time Settlement offered by the State Bank of India and to bail out the Corporate Debtor this time also but the Petitioner No.s 1 & 2 showed their helplessness in paying off such a big amount and therefore, the Petitioner No.s 3 & 4 were introduced by the Petitioner No.s 1 & 2 to honor the terms of One Time Settlement offered by the State Bank of India.

5. The Counsel for the Petitioners further submits that the Corporate Debtor through its Directors entered into Memorandum of Understanding dated 28.11.2018 with Petitioner No. 1 to 4 to offer 60% of shareholding in the Corporate Debtor Company to Petitioner No.s 1 to 4 in exchange of the Petitioners

helping the Corporate Debtor to honor the terms of One Time Settlement (OTS). The parties then again entered into a Memorandum of Understanding dated 28.11.2018 to declare the fixed assets of the machineries of the Corporate Debtor and certain checks and balances to be in place in order to have a revised shareholding of Mr. Atul Dattatray Banginwar as 40% and Petitioner No.s 1 to 4 to hold shares of 15% each.

6. The Petitioners, in addition to the payment for the purpose of OTS with the State Bank of India, continued to bear other expenses and employ funds for the Corporate Debtor Company under the good faith. In place of all the prior understanding, the Petitioners and the Corporate Debtor entered into an Investment Agreement dated 18.05.2019. As per Clause 2 of this Agreement, the stipulated six months for the purpose of issue of shares expired on 17.11.2019. As per Clause 9 of the said Agreement, on failure of the Corporate Debtor to issue shares by the date of 17.11.2019, the Petitioners are entitled to refund of the entire amount of payment along with interest at the rate of 18% p.a.

7. Further, the Petitioners had joined the Corporate Debtor Company by way of appointment as an Additional Director with effect from 28.11.2018 to assure that their invested money remains safe. But, the term of the Additional Director for all the four Petitioners came to an end on 30.09.2019 as per Section 161 of the Companies Act, 2013 (i.e. the date on which Annual General meeting of the Company should have been held).

8. The Counsel for the Petitioners further submits that even one of the Operational Creditor had initiated the CIRP under Section 9 of the Code against the Corporate Debtor and again, the Petitioner No. 3 helped the Corporate Debtor in making settlement with the said Operational Creditor by making payment to the Corporate Debtor of an amount of Rs. 14,46,496/-. A summary of the total

default amount by the Corporate Debtor is as below:

Particulars of Applicants	Amount (Rs)
Mrs. Sandhya Dinesh Sancheti (Applicant No. 1)	6,67,21,543/-
Mr. Amesh Ajitkumar Daga (Applicant No. 2)	4,68,33,290/-
Mr. Nemichand Balaram Khinvasara (Applicant No. 3)	4,85,39,757/-
Shashikant Zumberlal Katariya (Applicant No. 4)	4,77,83,675/-
Total	**20,98,78,265/-**

9. In spite of all the support and financial help by the Petitioners, the Corporate Debtor and its Director had reneged from their promise and failed to repay the outstanding. The Petitioners have also lost all their control in the Corporate Debtor Company even though they had invested heavily in the Corporate Debtor. The Petitioners have also sent Notices of Return on 16.06.2020 to the Corporate Debtor for the default that took place on 17.11.2019. The Record of Default was also submitted with Information Utility (National e-governance Services Ltd.) by all the Petitioners. The acts of the Corporate Debtor were in gross aberration with the stipulations of the Investment Agreement and thus, the Petitioners filed the present Petition against the Corporate Debtor.

Contentions of the Corporate Debtor:

10. The Counsel for the Corporate Debtor submits that the present Petition is not maintainable and ought to be dismissed. The Petitioners have included purported claims of eight other entities who are their relatives beside the claims of themselves in the total default amount despite the fact that the relatives were neither privy to the Memorandum of Understanding nor to the Investment Agreement. It is submitted that the Petitioners have acted as agents of the above

said eight other entities to allege the default of Rs. 20,98,78,265/- purported to have been committed by the Corporate Debtor and therefore, the amount alleged to be defaulted by the Corporate Debtor does not fall within the purview of 'Financial Debt' as defined under Section 5(8) of the Code. Thus, the present Petition deserve to be dismissed on account of suppression of the above said facts by the Petitioners. The relatives of the Petitioners whose computation of default has been included in the present Company Petition are as under:

Names of Relatives of Mrs. Sandhya Dinesh Sancheti (Applicant No. 1)	i. Sandesh Sancheti ii. Dinesh Sancheti iii. Nakoda Pharmaceuticals
Names of Relatives of Mr. Mr. Amesh Ajitkumar Daga (Applicant No. 2)	i. Ajit Daga ii. Shreeram Enterprises
Name of Relative of Mr. Nemichand Balaram Khinvasara (Applicant No. 3)	Pradeep & Co.
Names of Relatives of Shashikant Zumberlal Katariya (Applicant No. 4)	i. Arihant Medico ii. Ashish Katariya iii. Sangeeta Katariya

11. The Counsel for the Corporate Debtor further submits that the Petitioners were included as Authorised Signatories to the current Bank Accounts of the Corporate Debtor and the same is been continued till date as per Memorandum of Understanding dated 28.11.2018. Also, the Petitioners were appointed as

Additional Directors of the Corporate Debtor w.e.f. 28.11.2018. Their appointments as Additional Directors were in compliance of the two Memorandum of Understandings dated 28.11.2018 and therefore, the Petitioners can not claim that the Investment Agreement was in supersession and substitution of earlier Agreements.

12. The Counsel for the Corporate Debtor submits that the Petitioners had agreed to invest a sum of Rs. 15.90 Crores in the Corporate Debtor and upon receipt of investment of Rs. 15.90 Crores, the Corporate Debtor was bound to allot shares to the Petitioners after completion of the valuation process of the Corporate Debtor by the Registered Valuers. It is submitted that the Valuers were appointed by the Petitioners, however, the Valuation Report was never received by the Corporate Debtor. The Petitioners were in majority of Board of Directors of the Corporate Debtor, but still they did not take make any efforts to allot themselves equity shares of the Corporate Debtor even after having invested in the Corporate Debtor for the sole purpose of acquiring equity share capital.

13. The Counsel for the Corporate Debtor submits that the Petitioners shall be able to levy interest at the rate of 18% p.a. upon the Corporate Debtor only after termination of the agreement as per the Investment Agreement. However, no notice of termination had been issued to the Corporate Debtor. So, the act of the Petitioners to impose an interest of 18% p.a. is completely arbitrary.

14. It is submitted that the submission of the Petitioners that they vacated their office as Additional Directors of the Corporate Debtor w.e.f. 30.09.2019 is a false statement. Instead, the Petitioners have attended the Meeting of Committee of Creditors of the Corporate Debtor dated 08.02.2020 as Directors. Also, the Petitioners uploaded Form DIR-11 with the Registrar of Companies w.e.f. 25.06.2019. Therefore, the resignation of the Petitioners is a complete after

thought as in the present Petition, the Petitioners have stated their directorship ceased w.e.f. 30.09.2019.

15. The Counsel for the Corporate Debtor submits that as per Clause 7.3(b), i.e., Review of Management of the Investment Agreement dated 18.05.2019, the Petitioners had all rights to review the management of the Corporate Debtor, however, the Petitioners have deliberately failed to avail the said option. The Petitioners invested in the Corporate Debtor, however, their investment failed as they could not manage the affairs of the Corporate Debtor in a fair and prudent manner which lead to huge losses and hence, the investment in the Corporate Debtor was eroded.

16. The Counsel for the Corporate Debtor further submits that the Petitioners had purportedly invested sums in the Corporate Debtor prior to Investment Agreement dated 18.05.2019 as financial debts and claimed the date of default as 17.11.2019. It is submitted that if the Petitioners were so prudent and aware about the default on 17.11.2019 then why they would continue investing in the Company after the date of default till March-April 2020. Also, the Bank Statements annex to the Petition are only bank Statements of the Petitioners and their relatives. There are no ledger accounts of the Petitioners annexed to the Petition. In the circumstances mentioned above, the Counsel for the Corporate Debtor submits to reject the Petition with heavy costs and punish the Petitioners under Section 75 of the Code for omitting vital and important facts related to the present Petition.

<u>Findings:</u>

17. This Petition CP No. 1139 of 2020 has been filed by Mrs. Sandhya Dinesh Sancheti, Petitioner, against Trimurthi Foodtech Private Limited, the Corporate

Debtor, on 25.06.2020 under Section 7 of IBC, 2016. This Petition has been filed by four Petitioners viz, Mrs. Sandya Dinesh Sancheti (Petitioner No. 1), Mr. Amesh Ajitkumar Daga (Petitioner No. 2), Mr. Nemichancd Balaram Khinvasara (Petitioner No. 3) and Mr. Shashikant Zumbarlal Katariya (Petitioner No. 4). As per the Petition, the total amount of debt consequent to a default as on 31.05.2020 is Rs. 20,98,78,265/-.

18. The Corporate Debtor company is controlled by two shareholders namely Mr. Atul Dattatraya Banginwar (DIN No. 01054858) and Mr. Pradeep Dattatraya Banginwar (DIN No. 01283850), who together hold about 70% of the shareholding whereas the remaining about 30% is held by their close relatives.

19. The Bench notes that the Corporate Debtor had signed two MoU's with Petitioners on 28.11.2018 wherein the Corporate Debtor agreed to offer 60% of the shareholding to the Petitioner in exchange to honor the term of one-time settlement with banks by way of assistance provided by the Petitioner. Subsequent to this, the Petitioner assisted the Corporate Debtor in settling the OTS amount of the Corporate Debtor, however, no transfer of shareholding took place to the Petitioner. Subsequently, the Petitioner and the Corporate Debtor entered into an Investment Agreement dated 18.05.2019 by which the investors agreed to invest some money in the Company not exceeding about Rs. 15.9 crores. In this regard, Clause 1 of the said Investment Agreement is as under:

> *"1: Investment Amount:*
>
> *The PROMISOR agrees to accept from the INVESTORS and the INVESTORS agree to Invest, on the terms and conditions contained herein, the sum of not exceeding Rs. 15,90,00,000/- (Rupees fifteen Crores Ninety Lacs only). The said sum is hereinafter referred to as 'the Investment Amount'."*

20. The Bench notes that the main clause reflecting the purpose of the said Agreement is at Clause 2 which reads as under:

"2. TERM

The agreement shall be operative till either allotment of shares or complete repayment of principal and interest as per return policy. However, it will be mandate on part of promisor that either allotment or repayment must be completed within 6 months from date of execution of this agreement."

21. The Bench notes that this is a clear departure from the MoU which was about transfer of 60% shares. Here, no such share amount mentioned in this Agreement. In this regard, Clause 3 of the said Agreement is as under:

"3: RETURNS POLICY:

- *The PROMISOR agrees that it will allot Equity Shares to Investors within 1 week from the date of completion of valuation process by Registered Valuers after execution of this Agreement. Allotment shall be done at fair market value arrived by accepted valuation method as per valuation norms defined by government departments and bodies governing valuation practices.*
- *Once the valuation report is received, promisor will take action for holding Board Meeting and if required Extra-Ordinary General Meeting of members of the Company and complete the allotment process immediately.*
- *There will be no interest payable on investment once allotment of shares done.*
- *Once full amount of investment/loan is repaid, all shares issued to investors will be transferred to Mr. Atul Dattatraya Banginwar, Director of the promisor."*

22. It is clear from the above that it was mandate upon the promisor to either allot the equity shares or repay the entire amount along with interest within the outer limit of 6 months from the date of execution of the Investment Agreement as per Clause 2 of the Investment Agreement.

23. Further, the Bench notes that Clause 9 of the Investment Agreement speaks about the rate of interest applicable from the date of Demand Notices issued by Investors. Relevant para in Clause 9 of the said Agreement is as under:

> *"9.1: EFFECT OF TERMINATION:*
>
> *a. In case of termination as per sub-clause 'b' of Clause 9 above:*
>
> *i. The PROMISOR shall compensate the INVESTORS by way of payment of damages with interest thereon at the rate of 18% p.a. compoundable monthly from the date of Demand Notice by INVESTORS till the date of full and final payment."*

24. The Investment Agreement as per the Petition expired on 17.05.2019 after stipulated time period of 6 months from the date of the signing of the said Agreement, i.e., 18.05.2019. The two main defences which has been raised by the Corporate Debtor are;

a. Firstly, the total amount claimed by the Petitioner of about Rs. 20.98 crores is also inclusive of the claims of relatives of the Petitioner who are not part of the Petition. In this regard, it is a settled law that the adjudicating authority is only required to see whether the loan amount is beyond the threshold amount as per Section 4 of the Code. Therefore, this Bench is not going into the clause where the claim amount is Rs. 20.98 crores or less than that. In fact, as per the record of debt and default, the amount due by the Corporate Debtor to the Petitioner is beyond the threshold limit. A copy of NESL record has been provided in the Petition in respect of each of the four Petitioners which is as under:

Debt Information	
Type of Debt	*Financial*
Debt Reference No.	*18052019*
Creditor Location	*Pune*
Debt Contract Date	*18-05-2019*
Debt Start Date	*18-05-2019*
Debt Currency	*INR*
Sanctioned Debt Amount	*4,68,33,290.00*
Tenure	*Six months*
Facility Name	*Investment agreement with Loan and expenses*
Total Outstanding Amount	*4,68,33,290.00*
Amount Overdue	*4,68,33,290.00*
Days past due (DPD)	*215*
Account closed Flag	*No*
Rate of Interest	*18*
Old Debt Reference No.	*28.11.2018*
Repayment frequency	*Others*
Lending arrangement	*Others*
Sanction currency	*INR*
Sub type- Debt	*Credit facility*
Funded type	*Funded*
Drawing Power	*4,68,33,290.00*
Principal Outstanding	*3,62,91,599.00*
Interest Outstanding	*1,05,41,691.00*

Part-A Remarks	*Pursuant to the Investment agreement with Corporate Debtor (Trimurti Foodtech Pvt. Ltd.), the financial Creditor paid Rs. 2.80 Crores towards SBI OTS settlement and net payment of expenses of Rs. 82,91,599/- on which interest accrued for Rs. 1,05,41,691/-*

Default Information	
Date of default	*17-11-2019*
Total Outstanding	*4,68,33,290.00*
Default amount	*4,68,33,290.00*
Days past due	*215*
Part-C Remarks	*Default date is 6 months from the date of Investment*

Similarly, the Petitioner produces the record of default for the Corporate Debtor as per NESL record for three months.

b. Secondly, the defence taken by the Corporate Debtor that the Petitioner was Additional Director of the Corporate Debtor Company with effect from 28.11.2018 and they were on majority of the board and therefore, could have implemented the Investment Agreement on 18.05.2019 and could have got the shares of the Corporate Debtor Company transferred in their name. Therefore, the honour of non-transferring the shares lies not only with the Corporate Debtor but also with the Petitioner.

25. In fact, the Bench notes that the Petitioner became Additional Director on

28.11.2018, the day on which the MoU was signed. Later, the Petitioner had tendered their resignations which was accepted by the Managing Director of the Corporate Debtor company.

26. Also, the Bench notes that since the AGM of the company was not held, the Petitioner's directorship of the company had lapsed on 13.09.2019 in terms of Section 161 of the Companies Act, 2013. Section 161 of the Companies Act, 2013 is reproduced as under:

> "*161. Appointment of Additional Director, Alternate Director and Nominee Director:*
> *161 (1): The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier."*

27. Therefore, it is clear that well before passing of 6 months of the Investment Agreement, the Petitioners were not on the Board of the Corporate Debtor Company and they had tendered their resignation which was duly accepted by the MD of the Corporate Debtor Company. The Petitioners had also filed Form DIR-11 with the Registrar of Companies, Mumbai stating therein that they have resigned as Directors of the Corporate Debtor w.e.f. 25.06.2019. Form DIR-11 of one of the Directors is reproduced below:

FORM No. DIR-11

[Pursuant to proviso to section 168 (1) of The Companies Act, 2013 and rule 16 of The Companies (Appointment and Qualification of Directors) Rules, 2014]

सत्यमेव जयते

Notice of resignation of a director to the Registrar

Form Language (•) English ( ) Hindi

Refer the instruction kit for filing the form.

Notice is hereby given that , SANDHYA DINESH SANCHETI

the director of M/s TRIMURTI FOODTECH PRIVATE LIMITED

has/have resigned from the office of director of the company with effect from 25/06/2019

the details of which are given below:

1. Details of the company
   (a)*CIN U51220MH2004PTC148269 Pre-fill
   (b) GLN
   (c) Name of the company TRIMURTI FOODTECH PRIVATE LIMITED
   (d) Registered office address
   PLOT NO A-5 MIDC AREARAILWAY STATION
   AURANGABAD
   Maharashtra
   431005
   India
   (e) Email ID of the company md@freshvalley.in

2. Details of the director resigning from such company
   (a)*Director Identification Number (DIN) 05160280 Pre-fill
   (b) Name SANDHYA DINESH SANCHETI
   (c) Nationality IN

3. (a)*Date of appointment 28/11/2018
   (b)*Designation Additional director
   (c)*Category Independent

4. (a) *Date of filing of resignation with the company 25/06/2019
   (b) Effective date of resignation specified in the notice of resignation, if any

5. * Reasons for resignation
   Pre-Occupation.

6. *Whether confirmation is received from the company (•) Yes ( ) No

Attachment(s)

List of attachments

(1) *Notice of resignation filed with the company; [Attach]

(2) *Proof of dispatch; [Attach]

(3) Acknowledgement received from company; [Attach]

(4) Optional attachment(s) - if any [Attach]

Director Resignation TFPL_1.pdf
Resignation of directorship Trimurti foo_
Resignation of directorship Trimurti foo_

[Remove Attachments]

DS Ministry of Corporate Affairs

Declaration

SANDHYA DINESH SANCHETI, the applicant do solemnly declare that to the best of my/our knowledge and belief the information given in this return is correct and complete.

***To be digitally signed by Director**

SANDHYA DINESH SANCHETI Digitally signed by SANDHYA DINESH SANCHETI Date: 2020.10.17 10:49:42 +05'30'

DIN 05160280

Note: Attention is also drawn to provisions of Section 448 and 449 which provide for punishment for false statement and punishment for false evidence respectively.

[Modify] [Check Form] [Prescrutiny] [Submit]

This eForm has been taken on file maintained by the Registrar of Companies through electronic mode and on the basis of statement of correctness given by the filing company.

28. The Corporate Debtor contended that the Petitioners, despite being in control and majority in Board of Directors of the Corporate Debtor Company, did not allot shares to themselves. The Bench notes that the Corporate Debtor never allowed the valuation of the Company to take place as is evident from their Reply dated 15.07.2020 to the Notice of Return, i.e., Recall Notice dated 16.06.2020. In Reply to the Notice of Return, i.e., Reply to the Recall Notice, the Corporate Debtor clearly mentioned that the Corporate Debtor Company did not got the valuation done because an amount of Rs. 15.90 Crores were not paid to the Corporate Debtor. The relevant paragraphs of the Reply dated 15.07.2020 to the Notice of Return dated 16.06.2020 are extracted below:

"4. (iii) As per Clause 2 of the said Agreement, the Company was bound to either issue equity shares to the Investors or return the said Investment amount within a period of six months, provided the Investors had invested the agreed sum of Rs. 15.90 crores with the Company. However, the Investors have invested the said sum of Rs. 15.90 crores only by April/May 2020. However, the Investors have not brought/ raised the balance funds as per the MOU.

(iv) ***Further, despite the Investors not investing the agreed sum of Rs. 15.90 crores with the Company upon execution of the Agreement, there was no question of conducting the valuation of the company under any circumstances****. It is pertinent to note that the Company has never retracted from issuing equity shares to the Investors and the Company shall issue the equity shares to the Investors against their investment in the Company upon the easing out of the lockdown due to COVID-19.*

...

6. (ii) With reference to unnumbered Second Paragraph, the Company denies that the Company did not take any efforts to issue the equity shares. It is further denied that the Company did not take any efforts to return the amount of the received Investment. The Company states that it has received the Investment amount from the Investors upto April/May 2020 and due to the ongoing COVID-19 pandemic, the Company has been unable to carry out its valuation. ***It is repeated that the valuation of the Company could not be carried out due to non-receipt of the Investment amount as per MOU dated 28-11-18 by the Company.*** *It is submitted that the Company shall issue its Equity Shares as and when its valuation is conducted."*

29. The Bench notes that in the given scenario, it was the Corporate Debtor who did not allow the valuation of the shares to happen and therefore, saw to it

that the shares do not get transferred within 6 months' time. The Corporate Debtor's contention that valuation was to happen only after the payment of Rs. 15.9 Crores by the Petitioner is incorrect because as per Clause 3 of the Investment Agreement, it was agreed between the parties that the Corporate Debtor will allot equity shares to the Petitioners within one week from the date of the completion of the valuation process which the Corporate Debtor never allowed to happen. Therefore, the contentions of the Corporate Debtor that the Petitioners necessarily have to pay the full amount to the Corporate Debtor beforehand is not justified.

30. The Petitioners have mentioned in their Petition that they have continuously helped the Corporate Debtor which is also evident from the fact that the Petitioners have helped the Corporate Debtor in making the settlement with another Operational Creditor which resulted in the withdrawal of the CIRP of the Corporate Debtor in relation to Section 9 Petition in early 2020, i.e., much before the Petitioner herein filed CIRP proceeding against the Corporate Debtor itself. One of the grounds taken in defence by the Corporate Debtor is that in the earlier CIRP under Section 9, the Petitioners participated in the Committee of Creditors (COC) as the Ex-Directors of the Corporate Debtor. Let's assume for the sake of argument that the Petitioners were in the control of the Board of Directors of the Corporate Debtor, i.e., the Petitioners, if not *de jure* then *de facto,* were in control of the Corporate Debtor Company. However, even then the fact remains that the Petitioners would have the right and would be eligible to file for CIRP against the Corporate Debtor as a "Related Party" for the payment of the amount invested by the Petitioners. Just the fact that the Petitioners were the Ex-Directors of the Corporate Debtor, do not take away their right to claim for their outstanding amount payable by the Corporate Debtor to them.

31. Considering the above facts, we come to conclusion that the nature of debt herein is a "Financial Debt" as defined under Section 5(8) of the Code. It has also been established that there is a "Default" as defined under Section 3(12) of the Code on the part of the Corporate Debtor. The two essential qualifications, i.e., existence of 'debt' and 'default', for admission of a Petition under Section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.

32. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.

33. Further that, we have also perused the Form – 2, i.e., written consent of the proposed Interim Resolution Professional submitted along with this Petition by the Petitioner and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional. The IRP proposed by the Petitioner, Mr. Manoj Kumar Mishra, having registration No. IBBI/IPA-001/IP-P01152/2018-19/11902, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

34. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Corporate Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

35. That as prescribed under Section 13 of the Code, on declaration of Moratorium, the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment.

36. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

37. In view of the above, the Bench "**Allows**" the Company Petition No. CP (IB)/1139/MB/2020 under Section 7 of the Code initiating CIRP against the Corporate Debtor, i.e., Trimurti Foodtech Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

38. Ordered Accordingly.

Sd/-	Sd/-
Chandra Bhan Singh	Suchitra Kanuparthi
Member (Technical)	Member (Judicial)